SINGLE BENCH (1)

C. S. 300 (3)

IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition NO. 2905 /2006

PETITIONERS
DEFENDANTS

1. Smt. Malti Bai aged about 74 Years, Wd/o of Late Shri Madhav Sitaram Bhale
2. Shri Ashok aged about 51 years, S/o Late Madhav Sitaram Bhale
3. Shri Anil Bhale S/o Late Madhav Sitaram Bhale

All R/o Near Hanuman Mandir Tatyapara Raipur (C.G.)

VERSUS

RESPONDENT :
PLAINTIFF

Smt. Prakash Kaur aged about 60 years, W/o Shri Gurubachan Singh, R/o Station Road, Raipur (C.G.)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक WPND..2905 **सन्** 2005

(66)

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

1-8-2005

Shri Ratan Pusty, counsel for the petitioners.

Shri B. P. Sharma, counsel for the respondent.

Heard learned counsel for the parties.

By the instant petition, the petitioners have questioned the legality, propriety and correctness of the order dated 23-3-2005 whereby the application of the petitioners for taking additional documents on record has been rejected.

Brief facts leading to filing of this writ petition are that respondent herein has filed the suit for specific performance against the petitioners in which written statement has been filed and after framing of the issues, evidence of the plaintiff has commenced and the plaintiff's statement has been recorded. At this stage, the petitioners herein moved an application under Order 8 Rule 1 of the C.P.C. for taking documents on record i.e. reply of the notice dated 27-3-2002 sent by the advocate for the petitioners herein to the advocate for the respondent herein, postal receipt of the same and the acknowledgment. In the application Annexure-P/7 it was mentioned that at the time of filing of the written statement the documents were not available as the same were kept at some other place and that is why the defendants were not able to produce the documents along with written statement. The said documents are important and the delay is bonafide. The defendants were not having any intention to delay the proceedings.

I have perused the impugned order. The main ground of rejection taken by the trial Court is that the defendants at the time of filing of written statement have not mentioned in the list about the

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(67)

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

existence of these documents. Moreover, there is no reference about these documents in written statement. In this connection, Order 8 Rule 1A (3) envisages that '*a document which ought to be produced in Court by the defendant under this rule, but, is not so produced shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit.*' Perusal of para-21 of the plaint itself shows that the plaintiff herself admitted that reply of the notice was sent on behalf of defendants on 27-3-2002 and since the petitioners have not produced reply of the notice with the plaint and that is why the petitioners herein want to produce that document, therefore, genuineness of this document cannot be doubted. Moreover, other documents i.e. postal receipt and acknowledgement, which are Postal Department's documents, their genuineness also cannot be doubted.

Learned counsel for respondent argued that on account of taking this document on record unnecessarily proceeding will be delayed as the statement of the plaintiff has already been recorded.

As the matter relates to the specific performance of the contract in which exchange of document becomes relevant and important, therefore, in order to decide the dispute between the parties and more particularly the respondent even after admitting that reply of the notice has not been produced the same on record, as such presence of document becomes more relevant and for the delay the respondent can be compensated in terms of cost. Learned trial Court while passing the impugned order, without considering the above importance and para-21 of plaint of the petitioners, has rejected the application. Therefore, the impugned order suffers from the illegality, as such the same is liable to be set aside.

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(68)

मामला क्रमांक WP.No.2405 **सन्** 2005

..... **विरुद्ध** .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित —J—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

As far as other application is concerned, learned counsel for the petitioners submitted that he is not pressing the same. The application is dismissed as not pressed.

In the circumstances, the impugned order is quashed. The trial Court is directed to take these documents on record subject to payment of cost of Rs.300/- by the petitioners to the respondent. The petitioners herein are entitled to tender these documents into evidence. However, if the respondent feels that after evidence of the defendants it is necessary for her to give evidence in respect of these documents in rebuttal, then the plaintiff will be entitled to adduce the evidence.

With the direction aforesaid, the petition stands disposed of. Consequently, M.(W.)P. No.2439/2005 also stands disposed of. Parties are entitled for certified copy of this order.

Sd/-
L.C. Bhadoo
Judge

Barve/-